

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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*Counsel for Adobe, Inc.*

In re:

Bed Bath & Beyond Inc., et al.,

Debtors.<sup>1</sup>

Case No. 23-13359

Chapter 11

Judge: Hon. Vincent F. Papalia

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**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF ADOBE, INC.**

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Adobe, Inc. (“**Adobe**”), submits this limited objection and reservation of rights to the assumption of and assignment of the Adobe contracts as described on the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 714] (the “**Cure Notice**”). In support, Adobe respectfully states as follows:

**Background**

1. On June 13, 2023, the Debtors filed the Cure Notice, which identifies (a) those unexpired leases and executory contracts that may be assumed and assigned to a successful bidder, as defined in this Court’s bid procedures order [Docket No. 92], and (b) the Debtors’ proposed

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<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

cure amounts with respect to the unexpired leases and executory contracts. On the Cure Notice, the Debtors set forth the following Adobe contracts and cure amounts:

#	Debtor	Counterparty	Contract Description	Cure amount
101	Bed Bath & Beyond Inc.	ADOBE SYSTEMS INC.	Adobe 3yr Renewal	-
102	Bed Bath & Beyond Inc.	ADOBE SYSTEMS INC.	Adobe DR3114911: Analytics Prime OD Annual Renewal	-
103	Bed Bath & Beyond Inc.	ADOBE SYSTEMS INC.	AEM - extension 45,60,90 days	\$2,415.00
104	Bed Bath & Beyond Inc.	ADOBE SYSTEMS INC.	Adobe AEM 90 Bridge	-
105	Bed Bath & Beyond Inc.	ADOBE SYSTEMS INC.	ADOBE AEM 6-month Service Extension	-
106	Bed Bath & Beyond Inc.	ADOBE SYSTEMS INC.	Adobe True-up (2022-2023)	-
107	Bed Bath & Beyond Inc.	ADOBE SYSTEMS INC.	Adobe Baseline Anniversary 12/01/2022 - 11/30/2023 (Order# 40202053) - 2nd Year	-

### **Response**

2. The “Contract Description” in the Cure Notice does not provide Adobe with adequate information to allow Adobe to identify which of its contracts with Debtor Bed Bath & Beyond Inc. are being assumed and assigned. Adobe typically tracks its contracts using agreement numbers and deal registration numbers which are generally stamped in the top right corner of each agreement or included in the header of each agreement. The information in the Contract Description does not match Adobe’s internal records.

3. Counsel for Adobe corresponded with the Debtors’ counsel regarding the potential assumption and assignment of Adobe’s contracts with the Debtors. In response, Debtors identified four agreements, which contain a mix of expired and unexpired licenses. None of the contracts provided by Debtors clearly match the “Contract Description” on the Cure Notice. For example, the Contract Description for contract #102 has a deal registration number “DR 4114911,” but none of the contracts provided by the Debtors include that deal registration number.

4. Adobe does not object to the assumption and assignment of its unexpired contracts with the Debtors, provided, however, that any order approving assumption and assignment of Adobe contracts correctly identify the assumed contracts using the agreement number or deal registration numbers included on the documents, and that after the assumed contracts have been correctly identified, Adobe be given an opportunity to object to or confirm the proposed cure amounts with the Debtors.

5. In addition to certain unexpired contracts with the Debtors, Adobe also provided certain out of contract services on a limited term to Bed Bath & Beyond Inc. consistent with the pricing and terms set forth in Agreement Number 4400860050. Adobe filed a Proof of Claim (Claim 5621) (the “**Adobe POC**”) on June 9, 2023, related to those services and asserted a prepetition claim in the amount of \$237,445.23. To the extent that the Debtors seek to assume and assign the licenses and services covered by Agreement Number 4400860050, or any extensions provided under the terms of that contract, and the Adobe POC, Adobe asserts that the appropriate cure amount is \$237,445.23. Furthermore, to the extent that the Cure Notice purports to override and reduce Adobe’s timely filed proof of claim, the Cure Notice improperly deprives Adobe of the notice and evidentiary protections and presumptions of the Bankruptcy Rule 3007, which requires service of an objection at least thirty days prior to a scheduled hearing.

#### **Reservation of Rights**

6. Adobe reserves the right to object to the assumption and assignment of any contracts identified by the Debtors following this limited response, on adequate assurance of future performance or other grounds. Adobe also reserves all rights with respect to the Adobe POC and all rights arising under its contracts with the Debtor.

For the reasons above, Adobe requests that (1) any assumption correctly identify the Adobe contracts as detailed above so that Adobe can determine the proper cure amount; and (2) any assumption of licenses or services as set forth in the Adobe POC include a cure in an amount no less than \$237,445.23.

Dated: July 5, 2023

**PERKINS COIE LLP**

By: s/ Tina N. Moss

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**CERTIFICATE OF SERVICE**

I, Tina N. Moss, hereby certify that on this 5th of July, I caused a true and correct copy of the forgoing to be electronically filed with the Court using the CM/ECF System and to be served upon all parties requesting service therefrom. I further certify that I caused a true and correct copy of the foregoing to be served upon the following via electronic mail:

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Dated: July 5, 2023

*s/ Tina N. Moss*

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